IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6855 of 2007()

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PETITIONER/ACCUSED:

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THARAMMAL KALYANI, AGED 42 YEARS,
D/O. KRISHNANKUTTY, THARAMMEL HOUSE,KAVUGULLAKUNNU
KOTTARAKOTH, ENAPUZHA AMSOM, MALAPPURAM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.LUIZ GODWIN D'COUTH

RESPONDENT:

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STATE OF KERALA,
REPRESENTED BY EXCISE INSPECTOR, THAMARASSERY
EXCISE RANGE, THAMARASSERY, KOZHIKODE DISTRICT,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No. 6855 of 2007**

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Dated this the 13th day of November, 2007

**ORDER**

Application for anticipatory bail. Petitioner, a woman faces indictment in a prosecution under the Kerala Abkari Act. She was allegedly found to be in possession of 3 litres of arrack on 18.5.05. She has not been arrested so far. Investigation is complete. Final report has already been filed. Consequent to the non-appearance of the petitioner, the learned Magistrate has issued coercive processes against the petitioner. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner is willing to surrender before the learned Magistrate, but she apprehends that her application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. She therefore prays that appropriate directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under

Section 438 Cr.P.C can be issued in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving

sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

**(R.BASANT, JUDGE)**

sj

/TRUE COPY/

P.A.TO JUDGE